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26 UNITED STATES DISTRICT COURT

27 NORTHERN DISTRICT OF CALIFORNIA

28 UNITED STATES OF AMERICA and the STATE OF) Civil No. C03-5694 CRB
CALIFORNIA, by and through the CALIFORNIA)
DEPARTMENT OF FISH AND GAME, the) IN ADMIRALTY
CALIFORNIA STATE LANDS COMMISSION, and)
the REGIONAL WATER QUALITY CONTROL)
BOARD FOR THE NORTH COAST REGION,)

29 Plaintiffs,

30 vs.

31 BEAN STUYVESANT, LLC, et al.,

32 Defendants.

33 CONSENT DECREE

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of the State of California

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I. PARTIES

This Consent Decree ("Decree") is made and entered into by and among the following parties (hereinafter referred to collectively as "the Parties" and individually as "Party"):

A. Plaintiff United States of America ("the United States"), on behalf of the U.S. Department of the Interior ("DOI"), U.S. Fish and Wildlife Service ("USFWS"), the U.S. Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), the Department of Homeland Security ("DHS"), the United States Coast Guard ("USCG"), and the USCG National Pollution Funds Center, and each of them;

B. Plaintiff State of California ("State"), by and through the California Department of Fish and Game ("CDFG"), the California State Lands Commission ("CSLC"), and the Regional Water Quality Control Board for the North Coast Region ("RWQCB"), and each of them (together with the parties specified in paragraph A above, jointly referred to as "Plaintiffs"); and

C. Defendants Bean Stuyvesant, LLC, Bean Dredging LLC, Bean Dredging Corporation, Fleet National Bank, sued herein as "Fleet National Bank" and also as "Fleet National Bank Trustee", and Water Quality Insurance Syndicate, all sued *in personam*; and the Dredge STUYVESANT (Official Number 648540), sued *in rem*, and each of them (together jointly referred to as the "Settling Defendants").

II. INTRODUCTION

A. On or about May 1999, the United States of America, by and through the United States Army Corps of Engineers, entered into Contract No. DACW07-99-C-0012 with Manson Construction Co./Bean Stuyvesant, LLC, a Joint Venture, for dredging work to be performed in and upon navigable waters of the United States, including the waters of Humboldt Harbor and Bay, California; in June 1999, the said Joint Venture entered into a subcontract with Defendant Bean Stuyvesant, LLC, the sub-time charterer of the *in rem* Defendant, the Dredge STUYVESANT (Official Number 648540), pursuant to which the portion of the said work relevant to this action was performed by the Dredge STUYVESANT.

B. On or about September 6, 1999, the Dredge STUYVESANT, a vessel owned at that time by Fleet National Bank, in its capacity as owner trustee, operated by Defendant Bean Dredging

1 Corporation, the predecessor corporation of Defendant Bean Dredging LLC, and under sub-time
2 charter to Bean Stuyvesant, LLC, ruptured its fuel tank, causing approximately 2,000 gallons of
3 intermediate fuel oil to be discharged into the Pacific Ocean, from an area near the mouth of
4 Humboldt Bay, in Humboldt County, California and extending approximately four miles out to sea
5 (hereinafter, the "Spill"). The oil from the Spill spread on the open ocean and came ashore at
6 various locations along 60 miles of shoreline. As a result of the Spill, the United States and the
7 CDFG responded and incurred pollution removal costs and other damages.

8 C. The oil from the Spill caused injuries to natural resources at sea and along the shore,
9 including injuries to birds, fish, and their habitats, and also had an impact upon recreational uses of
10 the resources. The Trustees for the Natural Resources injured by the Spill include the USFWS, the
11 CDFG and the CSLC. The USFWS is a designated Trustee pursuant to subpart G of the National
12 Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 CFR §§ 300.600 *et seq.*)
13 and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987) as
14 amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)). The CDFG is a
15 designated Trustee pursuant to Section 1006 (b) (3) of the Oil Pollution Act of 1990 ("OPA"), 33
16 U.S.C. § 2706 and subpart G of the NCP. Additionally, the CDFG has natural resource trustee
17 authority pursuant to Fish and Game Code. §§ 711.7 and 1802, and the Lempert-Keene-Seastrand
18 Oil Spill Prevention and Response Act (Government Code §§ 8670.1 *et seq.*). The CSLC has
19 natural resource trustee authority pursuant to Public Resources Code §§ 6201 *et seq.*

20 D. After the Spill, the USFWS, the CDFG, and the CSLC, as Trustees for Natural
21 Resources, (hereinafter, the "Trustees") and the Settling Defendants entered into a Cooperative
22 Natural Resource Damage Assessment Agreement, pursuant to which the Trustees and the Settling
23 Defendants gathered and analyzed data and other information that they used to determine and
24 quantify the resource injuries. They estimated that the Spill had killed 135 Marbled Murrelets,
25 1,600 Common Murres, 670 other birds, including Loons, Grebes, and Brown Pelicans, 3,282
26 kilograms of shrimp, and more than 6,000 epipelagic fish. In addition, they estimated that the Spill
27 had oiled, to varying degrees, more than 3,100 acres of shoreline and caused the loss or diminished
28 value of at least 9,600 recreational days of activity. The Trustees published, and invited comment

1 from the public concerning, a draft Damage Assessment and Restoration Plan. This draft Plan
2 described alternative restoration projects under consideration by the Trustees to restore, replace, or
3 acquire the equivalent of the resources and their services injured by the Spill. The Settling
4 Defendants proposed, and the Trustees invited comment concerning, an alternative project whereby
5 Defendants would acquire a conservation easement interest in approximately 624 acres of certain
6 real property in Del Norte County, California, containing old-growth redwood stands that provide
7 breeding habitat for Marbled Murrelets. Additionally, the Defendants proposed to fund a dedicated
8 account to pay for the costs associated with monitoring and enforcing the terms of the conservation
9 easement and monitoring the occupancy of the property by Marbled Murrelets. This alternative
10 project is designed to compensate in part for, and provide appropriate restoration with respect to,
11 the injuries to Marbled Murrelets.

12 E. Following the Spill, the United States filed this action to recover certain unpaid
13 pollution cleanup costs incurred in responding to the Spill, in addition to its statutory attorneys' fees
14 and disbursements recoverable under the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. §§ 2701 *et*
15 *seq.* In addition, the United States' Complaint prayed for, *inter alia*, entry of a declaratory judgment
16 regarding the defendants' liability for removal costs and damages, as required by Section 1017(f)(2)
17 of OPA, 33 U.S.C. § 2717(f)(2). The Complaint did not assert claims for natural resource damages,
18 but expressly reserved the filing of such claims by amendment or otherwise when they became
19 known to greater certainty as to their extent, nature, and amount.

20 F. The Settling Defendants paid in full the pollution cleanup costs that were the subject
21 of the Complaint.

22 G. The United States has, concurrently with lodging of this Consent Decree, filed a
23 stipulation of the Parties permitting the amendment of the Complaint to add a claim for natural
24 resource damages under OPA and such an amended Complaint.

25 H. In 2003, the State of California filed its own suit, *State of California v. Bean*
26 *Stuyvesant, LLC, et al.*, in the Superior Court of California, County of Humboldt, Case No.
27 DR030744, against certain of the Defendants, asserting claims for damages, including response
28 costs and natural resource damages arising from the Spill, as well as claims for statutory penalties

1 under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, Government Code §§
2 8670.1 *et seq.*, and various other State statutes; the State of California's action has been dismissed
3 without prejudice.

4 I. The Parties agree, and the Court, by entering this Consent Decree, finds, that this
5 Consent Decree has been negotiated by the Parties in good faith, that it is intended to avoid certain
6 litigation among the Parties and that it is fair, reasonable, and in the public interest.

7 NOW, THEREFORE, before the taking of any testimony, without the adjudication or
8 admission of any issue of fact or law except as provided in Section III, below, and with the consent
9 of the Parties, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

10 **III. JURISDICTION AND VENUE**

11 1. This Court has jurisdiction over the subject matter of this action pursuant to, *inter*
12 *alia*, 28 U.S.C. §§ 1331, 1345, 1355 & 1367, Sections 1002(a), (b)(1)(A) and (b)(2)(A), 1006, and
13 1017 (b) of OPA, 33 U.S.C. §§ 2702(a), (b)(1)(A) & (b)(2)(A), 2706, 2717(b), and sections 9(a)(1)
14 and 11(a)(1) of the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1538(a)(1), 1540(a)(1). Venue
15 is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c) and 1395(a), 33 U.S.C. §2717(b), and
16 16 U.S.C. §1540(a)(1), because Settling Defendants do business in, and the Spill occurred in, this
17 judicial district. The Court has personal jurisdiction over Settling Defendants for this particular
18 action, and each Party does not contest the Court's jurisdiction and does not contest the propriety of
19 venue in this judicial district for the purposes of this Decree.

20 **IV. APPLICABILITY**

21 2. The obligations of this Consent Decree apply to and are binding upon the Plaintiffs,
22 and each of them, and upon Settling Defendants, and each of them, and any of Plaintiffs' and/or
23 Settling Defendants' successors, assigns, or other entities or persons otherwise bound by law.

24 **V. DEFINITIONS**

25 3. Terms used in this Consent Decree that are defined in OPA or in regulations
26 promulgated pursuant to OPA shall have the meanings assigned to them in OPA or in such
27 regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used
28 in this Consent Decree, the following definitions shall apply:

1 (a) "Complaint" shall mean the amended civil complaint filed in this action by
2 the Plaintiffs concurrently with the lodging of this Consent Decree.

3 (b) "Contract No. DACW07-99-0012" shall mean the contract entered into in or
4 about May 1999 by and between the United States of America, by and through the United States
5 Army Corps of Engineers, with Manson Construction Co./ Bean Stuyvesant, LLC, a Joint Venture,
6 and shall include any and all amendments and modifications to said Contract.

7 (c) "Entry of the Consent Decree" or "Entry" shall occur on the date when this
8 Decree, after signing by the Judge, is entered in the civil docket under Rule 79(a) of the Federal
9 Rules of Civil Procedure.

10 (d) "Natural Resource" and "Natural Resources" shall mean land, fish, wildlife,
11 biota, air, water, ground water, drinking water supplies, and other such resources belonging to,
12 managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or
13 the State of California, and shall also mean the services provided by such resources to other
14 resources or to humans.

15 (e) "Natural Resource Trustees" or "Trustees" shall mean those federal and state
16 agencies or officials designated or authorized pursuant to the U.S. Clean Water Act (Federal Water
17 Pollution Control Act), 33 U.S.C. §§ 1251, *et seq.* ("CWA"), OPA, and/or applicable state law to
18 act as Trustees for the Natural Resources belonging to, managed by, controlled by, or appertaining
19 to the United States or the State of California. Specifically, as used in this Consent Decree, the
20 Trustees are the USFWS, the CDFG, and the CSLC.

21 (f). "Paragraph" shall mean a portion of this Decree identified by an arabic
22 numeral.

23 (g) "Removal Costs" and "Damages" shall have the meanings ascribed to them
24 pursuant to Sections 1001(5), 1001(31) and 1002 (b) of OPA, 33 U.S.C. §§ 2701(5), 2701(31) and
25 2702(b), and Government Code § 8670.56.5 .

26 (h) "Restore" or "Restoration" shall mean any action or combination of actions to
27 restore, rehabilitate, replace or acquire the equivalent of any Natural Resource or its services
28 injured, lost, or destroyed as a result of the Spill.

1 (i) "Section" shall mean a portion of this Decree identified by a roman numeral.

2 (j) "Spill" shall mean the occurrence described in Section II, B, above.

3 (k) "State" shall mean the State of California, acting by and on behalf of the
4 CDFG, the CSLC, and the RWQCB.

5 (l) "State Complaint" shall mean the civil Complaint for Recovery of Damages
6 and Civil Penalties filed by the State of California, *ex rel.* the CDFG, the CSLC, and the RWQCB,
7 on December 31, 2003, in the Superior Court of California, County of Humboldt, Case No.
8 DR030744.

9 (m) "United States" shall mean the United States of America, including its
10 departments, agencies and instrumentalities.

11 **VI. SETTLEMENT PAYMENTS**

12 4. Within thirty (30) business days after Settling Defendants receive notice that this
13 Decree has been lodged with this Court, Settling Defendants shall deposit the amount of two
14 million nine hundred thousand dollars (\$2,900,000.00) into an escrow account bearing interest on
15 commercially reasonable terms, in a federally-chartered bank (hereinafter, the "Escrow Account").
16 If the Decree is not entered by this Court, and the time for any appeal of that decision has run, or if
17 this Court's denial of Entry is upheld on appeal, the monies placed in escrow, together with accrued
18 interest thereon, shall be returned to Settling Defendants. If the Decree is entered by this Court,
19 Settling Defendants shall, within fifteen (15) days of the date of such Entry, cause the monies in the
20 Escrow Account, and all accrued interest thereon, to be released and disbursed as follows:

21 (a) The sum of one million, nine hundred and seventy five thousand dollars
22 (\$1,975,000.00), together with all the accrued interest on the total amount of the monies deposited
23 in the Escrow Account (as aforesaid \$2.9 million), shall be paid to DOI, on behalf of the Natural
24 Resource Trustees, for the purposes set forth in Subparagraphs (iii) and (iv) below. Such payment
25 shall be made by Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in
26 accordance with instructions that the Financial Litigation Unit of the U.S. Attorney's Office for the
27 Northern District of California shall provide to Settling Defendants following Entry of this Decree
28

1 by this Court. Settling Defendants shall send a transmittal letter, indicating that the EFT has
2 occurred, to the Parties in accordance with Section XII of this Decree ("Notices") and to:

3 Department of the Interior
4 Natural Resource Damage Assessment and Restoration Program
5 Attention: Restoration Fund Manager
6 1849 "C" Street, N.W., Mail Stop 4449
7 Washington, D.C. 20240

8 The EFT and transmittal letter shall reflect that the payment is being made to the "Natural
9 Resources Damage Assessment and Restoration Fund, Account No. 14X5198 – STUYVESANT
10 OIL SPILL." DOI will assign these funds a special project number to allow the funds to be
11 maintained as a segregated account within the Department of Interior Natural Resource Damage
12 Assessment and Restoration Fund, Account No. 14X5198**** (the "STUYVESANT OIL SPILL
13 NRD Account").

14 (i) DOI shall, in accordance with law, manage and invest funds in the
15 STUYVESANT OIL SPILL NRD Account and any return on investments or interest
16 accrued on the Account for use by the Natural Resources Trustees in connection with
17 Restoration of Natural Resources affected by the Spill. DOI shall not make any
18 charge against the STUYVESANT NRD Account for any investment or
19 management services provided.

20 (ii) DOI shall hold all funds in the STUYVESANT NRD Account, including
21 return on investments or accrued interest, subject to the provisions of this Decree.

22 (iii) The Natural Resources Trustees commit to the expenditure of the funds set
23 forth in this Subparagraph (a) for the design, implementation, permitting (as
24 necessary), monitoring, and oversight of Restoration projects and for the costs of
25 complying with the requirements of the law to conduct a restoration planning and
26 implementation process. The Natural Resource Trustees plan to use the funds for
27 restoration, enhancement, and protection of sandy beach and marsh habitat, for
28 projects benefiting bird species injured by the Spill, for projects providing human
use benefits, and for oversight of these Restoration projects and the additional

1 Restoration project benefiting Marbled Murrelets described in Section VII, below
2 (Conservation Easement).

3 (iv) The allocation of funds for specific projects will be contained in a
4 Restoration Plan prepared and implemented jointly by the Trustees, for which public
5 notice, opportunity for public input, and consideration of public comment has been
6 provided. The Trustees jointly retain the ultimate authority and responsibility to use
7 the funds in the STUYVESANT NRD Account to Restore Natural Resources in
8 accordance with applicable law, this Consent Decree, and any Memorandum of
9 Understanding (MOU) among them.

10 (b) Two hundred fifty four thousand, sixty dollars (\$254,060.00) to DOI, Natural
11 Resource Damage Assessment and Restoration Fund, Account No. 14X5198- STUYVESANT
12 NRD Account, for reimbursement of its Natural Resource Damage Assessment costs associated
13 with the Spill. Payment shall be made by EFT to the U.S. Department of Justice in accordance with
14 instructions that the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District
15 of California shall provide to Settling Defendants following Entry of this Consent Decree by this
16 Court. At the time of payment, Settling Defendants shall simultaneously send written notice of
17 payment and a copy of any transmittal documentation (which shall reference DOJ case number 90-
18 5-1-1-07061) to the Parties in accordance with Section XII of this Decree ("Notices").

19 (c) Twenty two thousand, ninety dollars (\$22,090.00) to NOAA for
20 reimbursement of its Natural Resource Damage Assessment costs associated with the Spill.
21 Payment shall be made by EFT to the U.S. Department of Justice in accordance with instructions
22 that the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of
23 California shall provide to Settling Defendants following Entry of this Consent Decree by this
24 Court. At the time of payment, Settling Defendants shall simultaneously send written notice of
25 payment and a copy of any transmittal documentation (which shall reference DOJ case number 90-
26 5-1-1-07061) to the Parties in accordance with Section XII of this Decree ("Notices").

27 (d) Five hundred eighty eight thousand, eight hundred fifty dollars (\$588,850.00)
28 to CDFG for reimbursement of its Natural Resource Damage Assessment costs associated with the

1 Spill. Payment is to be made by trust check, certified check, or money order payable to the State of
2 California Department of Fish and Game. The check or money order shall be sent by certified mail
3 to:

4 State of California Department of Fish and Game
5 Office of Spill Prevention and Response
6 Attn: Katherine Verrue-Slater, Staff Counsel
7 1700 "K" Street, Suite 250
8 Sacramento, California 95814

9 The check shall reference the Stuyvesant Oil Spill and reflect that it is a payment to the Oil Spill
10 Response Trust Fund pursuant to Government Code section 8670.47.5.

11 (e) Twelve thousand dollars (\$12,000.00) to the CSLC for reimbursement of its
12 Natural Resource Damage Assessment costs associated with the Spill. Payment is to be made by
13 trust check, certified check, or money order payable to the California State Lands Commission.

14 The check or money order shall be sent by certified mail to:

15 California State Lands Commission
16 Attn: Mark Meier, Staff Counsel
17 100 Howe Avenue, Suite 100-South
18 Sacramento, California 95825

19 The check shall reference the Stuyvesant Oil Spill.

20 (f) Forty four thousand dollars (\$44,000.00) to the CDFG to settle Settling
21 Defendants' civil liabilities associated with the Spill. Payment is to be made by trust check,
22 certified check, or money order payable to the State of California Department of Fish and Game.

23 The check or money order shall be sent by certified mail to:

24 State of California Department of Fish and Game
25 Office of Spill Prevention and Response
26 Attn: Katherine Verrue-Slater, Staff Counsel
27 1700 "K" Street, Suite 250
28 Sacramento, California 95814

29 The check shall reference the Stuyvesant Oil Spill and reflect that it is a payment to the Fish and
30 Wildlife Pollution Account. CDFG shall deposit the money as follows: One half into the Oil
31 Pollution Administration Subaccount and one half into the Oil Pollution Response and Restoration
32 Subaccount.

1 (g) Four thousand dollars (\$4,000.00) to the RWQCB to settle Settling
2 Defendants' civil liabilities associated with the Spill. Payment is to be made by trust check,
3 certified check, or money order payable to the State Water Resources Control Board. The check or
4 money order shall be sent by certified mail to:

5
6 North Coast Regional Water Quality Control Board
7 ATTN: Sheryl Schaffner, Staff Counsel
8 5550 Skylane Blvd., Suite A
9 Santa Rosa, CA 95403

10 The check shall reference the Stuyvesant Oil Spill and reflect that it is a payment to the State Water
11 Pollution Cleanup and Abatement Account.

12 5. Certain of the Settling Defendants previously have paid, *via ex parte*
13 payments made directly to the National Pollution Funds Center, the principal amount of the
14 response cost invoice that is the subject of the original Complaint, to wit, payments totaling seventy
15 thousand, eight hundred and twelve dollars and thirty cents (\$70,812.30), said total amount
16 pertaining to the June 14, 2004 invoice identified herein as "NPFC, Federal Project Bill No.
17 A99035-002-02-1."

18 **VII. CONSERVATION EASEMENT AND ENDOWMENT**

19 6. Within twenty-one (21) days after Entry of this Decree, Settling Defendants shall
20 deposit the amount of four million four hundred ten thousand dollars (\$4,410,000.00) into an
21 escrow account, with escrow instructions approved by the Plaintiffs, in a federally-chartered bank
22 (hereinafter, the "Miracle Mile Escrow Account"). Thereafter, Settling Defendants shall cause the
23 principal amount in the Miracle Mile Escrow Account (\$4,410,000.00), to be released and disbursed
24 for completion of the purchase, from the property owners, of a conservation easement (hereinafter,
25 the "Easement") in the form and on the terms set forth in Appendix A to this Decree, over those
26 certain parcels of land described therein, consisting of approximately 624 acres and commonly
27 known as the "Miracle Mile Complex." Upon release and disbursal of the principal amount, all
28 accrued earnings on the monies in the Miracle Mile Escrow Account shall be paid to DOI, on behalf
of the Natural Resource Trustees, in accordance with the terms and procedures set forth in VI.4.(a)
of this Decree. Acquisition of the Easement shall occur by no later than February 28, 2008, and

1 only after a determination by the Plaintiffs (who may first be permitted an opportunity to inspect the
2 parcels) that the condition of the Miracle Mile Complex has not been materially altered since June
3 2004. If the Plaintiffs determine, in their sole discretion, that the Miracle Mile Complex has been
4 materially altered in a manner that diminishes its value as Marbled Murrelet habitat and acquisition
5 of the Easement no longer constitutes adequate compensation for the injury to this species, they
6 shall inform the Settling Defendants of their determination. The Parties shall then attempt to agree
7 on alternate compensation. If the Plaintiffs determine that the Miracle Mile Complex has not been
8 materially altered, the Easement shall be acquired on behalf of Save-the-Redwoods League
9 ("SRL"), an organization incorporated in accordance with Internal Revenue Code § 501(c)(3), 26
10 U.S.C. § 501(c)(3). In general, the purpose of the Easement is to ensure that no activities may
11 occur in the Miracle Mile Complex that are inconsistent with the best interests of the Marbled
12 Murrelet (as determined by USFWS and CDFG). The Easement shall run with the land and burden
13 the parcels in perpetuity for that purpose. The Easement shall name the USFWS and CDFG, or
14 their designees, as intended "holders" of third-party rights to enforce its terms, as Trustees for the
15 injured natural resource benefited by the Easement. Upon the execution of the Easement, Settling
16 Defendants shall cause it to be duly recorded in the County Recorder's Office of Del Norte County
17 and shall provide file-stamped copies to the Trustees.

18 7. Within thirty (30) days of Entry of this Decree, Settling Defendants shall pay the
19 sum of three hundred twenty six thousand, twenty dollars (\$326,020.00) to SRL for deposit into the
20 Miracle Mile Fund Account, comprising two separate subaccounts, the CE Administration Fund
21 and the Murrelet Monitoring Fund (each a "Fund Account"), to be held by SRL. The Miracle Mile
22 Fund Account shall be a segregated account within SRL's investment accounts. The monies shall
23 be allocated as follows: \$216,500.00 into the CE Administration Fund and \$109,520.00 into the
24 Murrelet Monitoring Fund. At the time of payment, Settling Defendants shall simultaneously send
25 written notice of payment and a copy of any transmittal documentation (which shall reference DOJ
26 case number 90-5-1-1-07061) to the Parties in accordance with Section XII of this Decree
27 ("Notices"). The CE Administration Fund is to be used exclusively to reimburse SRL for costs
28 incurred to monitor compliance with the terms of the conservation easement established in

1 accordance with this Decree and to enforce the conservation easement if necessary. The Murrelet
2 Monitoring Fund is to be used exclusively to reimburse SRL for costs incurred to monitor the
3 presence or absence of Marbled Murrelets in the Miracle Mile Complex. The Miracle Mile Fund
4 Account shall be managed by SRL in accordance with the *Memorandum of Understanding between*
5 *the U.S. Fish and Wildlife Service and the California Department of Fish and Game and Save-the-*
6 *Redwoods League Regarding Management of a Conservation Easement for the Miracle Mile*
7 *Complex* (SRL-Trustee MOU), which will be executed in the form attached hereto as Appendix B.

8 **VIII. STIPULATED PENALTIES**

9 8. If Settling Defendants fail to cause any payment to be made when due as required by
10 Sections VI and VII, above, or to cause the conveyance of the Easement or payment of money to
11 SRL for deposit into the Miracle Mile Fund Account, as required by Section VII, above, Settling
12 Defendants shall pay to the United States and to the State, respectively, a stipulated penalty of
13 \$1,000 per day each, for each day that any such payment is late, that the Easement is not purchased,
14 or that the payment to SRL for deposit into the Miracle Mile Fund Account is late.

15 9. Any stipulated penalties, as described above, owing to the United States shall be paid
16 by EFT in accordance with instructions to be provided by the Financial Litigation Unit of the U.S.
17 Attorney's Office for the Northern District of California, or by certified or cashier's check in the
18 amount due, payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07061, and
19 delivered to the office of the United States Attorney, Financial Litigation Unit, Northern District of
20 California, 450 Golden Gate Avenue, San Francisco, California 94102. Payment of stipulated
21 penalties shall be accompanied by transmittal correspondence stating that any such payment is for
22 late payment of amount(s) due under this Decree and shall reference DOJ No. 90-5-1-1-07061 and
23 the case name and number.

24 10. Any stipulated penalties, as described above, owing to the State shall be paid by
25 trust check, certified check, or money order payable to the California Department of Fish and
26 Game. Payment of stipulated penalties shall be accompanied by transmittal correspondence stating
27 that any such payment is for late payment of amount(s) due under this Decree and shall include the
28

1 identifying information set forth in Paragraph 4(f), above. The check or money order shall be sent
2 by certified mail to:

3 State of California Department of Fish and Game
4 Office of Spill Prevention and Response
5 Attn: Katherine Verrue-Slater, Staff Counsel
6 1700 "K" Street, Suite 250
7 Sacramento, California 95814

8 11. Settling Defendants shall not deduct any stipulated penalties paid under this Section
9 in calculating their federal or state income taxes.

10 12. If Settling Defendants fail to pay stipulated penalties according to the terms of this
11 Decree, Settling Defendants shall be liable for interest on such penalties, as provided for in 28
12 U.S.C. § 1961, accruing as of the date payment became due.

13 **IX. DECLARATION OF RESPONSIBILITY OF OPERATOR OF**
14 **DREDGE STUYVESANT AS RESPONSIBLE PARTY**

15 13. Pursuant to the requirements of Section 1017(f)(2) of OPA, 33 U.S.C. § 2717(f)(2),
16 Bean Dredging LLC, the successor corporation to Bean Dredging Corporation, is a Responsible
17 Party for the Spill within the meaning of OPA. Additionally, Bean Dredging LLC, the successor
18 corporation to Bean Dredging Corporation, is a Responsible Party for the Spill within the meaning
19 of Government Code Section 8670.3(w)(2).

20 **X. EFFECT OF SETTLEMENT**

21 14. Effective upon Settling Defendants' performance of their payment obligations as set
22 forth in Section VI of this Decree and upon their full and satisfactory completion of their other
23 obligations as set forth in Section VII of this Decree, this Decree shall resolve any and all civil
24 claims of Plaintiffs, and any of them, for removal costs, response costs, and for damages for injury
25 to, destruction of, loss of, or loss of use of Natural Resources arising from the Spill, including
26 natural resource damage assessment and restoration monitoring costs associated with the Spill, as
27 provided for by Section 1002(b) of OPA, 33 U.S.C. §2702(b), Government Code § 8670.56.5, Fish
28 and Game Code §§ 12015, 12016, 2014, and Harbors and Navigation Code §151. In addition, this
Decree shall resolve Settling Defendants' liability for civil penalties under Sections 9(a)(1) and
11(a) of the ESA, 16 U.S.C. §§ 1538(a)(1), 1540(a), section 311(b)(6) and (b)(7) of the CWA, 33

1 U.S.C. §1321(b)(6) and (7), as amended by OPA, under Government Code § 8670.66, Fish and
2 Game Code §§ 5650 and 5650.1, and Water Code §§ 13350 and 13385.

3 15. Notwithstanding any other provision of this Decree, the United States and the State
4 reserve the right to institute proceedings against the Settling Defendants in this action or in a new
5 action seeking recovery of Natural Resource Damages: (1) based on injury to, destruction of, or loss
6 of natural resources as a result of the Spill which resulted from conditions that were unknown to the
7 Trustees as of the date when this Decree is lodged with this Court; or (2) based on information
8 received by the Trustees after the date when this Decree is lodged with this Court which indicates
9 that there was injury to, destruction of, or loss of natural resources as a result of the Spill which was
10 of a type or magnitude unknown to the Trustees as of the said date.

11 16. Notwithstanding any other provision of this Decree, and pursuant to the Declaration
12 set forth in Section IX above, the United States reserves the right to institute proceedings against the
13 Settling Defendants in this action or in a new action seeking recovery of removal costs resulting
14 from the Spill based on claims submitted to or filed against the United States after the date when
15 this Decree is lodged with this Court which indicate that there are, or may be, such removal claims
16 and removal costs unknown to the United States as of the date when this Decree is lodged with this
17 Court.

18 17. Subject to the provisions of the immediately following Paragraph of this Decree,
19 Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of
20 action of any nature against the United States or the State under federal, state, or local law, arising
21 out of or relating to this decree or to the Spill.

22 18. On or about September 6, 2005, the Settling Defendants filed a claim pursuant to
23 Sections 1008 and 1013 of OPA, 33 U.S.C. §§ 2708 and 2713, to recover sums claimed to have
24 been paid by the Settling Defendants arising from or connected with the Spill, said claim based
25 upon the grounds that Settling Defendants are entitled to limit their liability pursuant to Section
26 1004(a) of OPA, 33 U.S.C. § 2704(a). The Settling Defendants expressly reserve and retain their
27 rights with respect to the above mentioned claim dated September 6, 2005, and their rights, if any,
28 to file additional claims pursuant to Sections 1008 and 1013 of OPA, 33 U.S.C. §§ 2708 and 2713,

1 to recover any sums paid by the Settling Defendants arising from or connected with the Spill upon
2 the grounds that Settling Defendants are entitled to limit their liability pursuant to Section 1004(a)
3 of OPA, 33 U.S.C. § 2704(a).

4 19. The United States disputes any and all claims and rights, if any, of the Settling
5 Defendants, or any other persons or entities, to recover from the United States and/or the Oil Spill
6 Liability Trust Fund any sums paid by any of the Settling Defendants, or any other persons or
7 entities acting on their behalf, arising from or connected with the Spill upon any grounds or bases,
8 including, but not limited to, the grounds reserved and retained by the Settling Defendants as set
9 forth in the immediately preceding Paragraph concerning the Settling Defendants' claims that they
10 are entitled to limit their liability pursuant to OPA, 33 U.S.C. §2704(a). The United States'
11 signature on this Decree and its willingness to have this Decree entered by the Court is not an
12 admission by the United States of such disputed claims and rights and, to the contrary, the United
13 States expressly reserves any and all claims, rights, and defenses to such claims that have been or
14 may in the future be asserted by the Settling Defendants.

15 20. Furthermore, with respect to the foregoing claim previously filed by one or more of
16 the Settling Defendants on or about September 6, 2005, said claim referred to in Paragraph 18
17 above, the United States expressly reserves any and all claims, rights, and defenses to said claim,
18 including, but not limited to, claims and rights based upon the United States' contention, which
19 contention is denied by the Settling Defendants, that the filing of said claim constitutes a tortious
20 and contractual breach of, and tortious interference with, the terms, provisions, amendments,
21 modifications, and releases pertaining to Contract No. DACW07-99-C-0012.

22 21. Notwithstanding any other provision of this Decree, including the provisions and
23 covenants set forth in Section X, Paragraphs 15 and 16 hereof, the United States expressly reserves
24 and retains its rights to take whatever actions or commence any proceedings, including but not
25 limited to, and without limitation, claims, proceedings, administrative proceedings, actions, and
26 causes of action against the Settling Defendants and any other persons, parties or entities, including,
27 but not limited to, any and all of the Settling Defendants' underwriters, insurers, excess insurers,
28 and re-insurers, arising from or relating to the alleged tortious and contractual breaches of, and

1 alleged tortious interference with, the terms, provisions, amendments, modifications, and releases
2 pertaining to Contract No. DACW07-99-C-0012. With respect to all rights reserved and retained
3 by the United States pursuant to this Paragraph, the United States expressly reserves any and all
4 rights to recover any and all sums from the Settling Defendants, including, but not limited to, and
5 without limitation, any sums that have been or may in the future be asserted, sought, claimed, or
6 recovered by the Settling Defendants pursuant Section X, Paragraph 18 of this Decree, including,
7 but not limited to, claims for payment of removal costs and damages, including natural resource
8 damages.

9 22. The Settling Defendants dispute any and all claims and rights, if any, of the United
10 States, as set forth in the immediately preceding Paragraph, to recover from the Settling Defendants,
11 or any or all of the Settling Defendants' underwriters, insurers, excess insurers, and re-insurers,
12 arising from or related to, the alleged tortious and contractual breaches, and alleged tortious
13 interference with, the terms, provisions, amendments, modifications, and releases pertaining to
14 Contract No. DACW07-99-C-0012. The Settling Defendants' signature on this Decree and their
15 willingness to have this Decree entered by the Court is not an admission by the Settling Defendants,
16 or any or all of the Settling Defendants' underwriters, insurers, excess insurers, and re-insurers, or
17 any of them, of such disputed claims and rights and, to the contrary, the Settling Defendants
18 expressly reserve any and all claims, rights, and defenses to such claims that are or may be asserted
19 by the United States.

20 23. With respect to the rights reserved and retained by the United States pursuant to
21 Paragraphs 19-21 above, the United States shall not commence any such claim, proceeding,
22 administrative proceeding, action, or cause of action referred to therein until the expiration of one
23 hundred and twenty (120) days after the Conclusion, as defined below, of any claim filed by any
24 Settling Defendant, their underwriters, insurers, excess insurers, or re-insurers, pursuant to the claim
25 as described and reserved in Paragraph 18 above. For purposes of this Decree, the Conclusion of
26 such claim as described and reserved in Paragraph 18 above shall be upon the happening of any of
27 the following events:

28 (a) The voluntary or involuntary dismissal of such claim;

1 (b) If applicable, the entry of a final, non-appealable administrative order or, if
2 applicable, judicial order or judgment fully and finally disposing of such claim;

3 (c) The payment by the Oil Spill Liability Trust Fund to the Settling Defendants or any
4 other entity or person with respect to or in settlement of the claim as described and reserved in
5 Paragraph 18 above.

6 Within ten (10) days of the Conclusion of such claim as aforesaid, the Settling Defendants
7 shall provide written notice to the United States of the Conclusion of such claim, such written
8 notice to be provided to the United States in accordance with the provisions of Paragraph 28 below.

9 24. While any such claim filed by any Settling Defendant, their underwriters, insurers,
10 excess insurers, or re-insurers pursuant to the provisions of Paragraph 18 above is pending, any
11 claims, proceedings, administrative proceedings, actions, or causes of action reserved and retained
12 by the United States pursuant to Paragraphs 19-21 above shall be, and the same hereby are, tolled
13 with respect to any applicable statutes of limitation, if any, that may apply. By agreeing to the
14 provisions of this Paragraph herein, the United States does not concede that any statutes of
15 limitation are relevant or applicable.

16 25. This Decree does not limit or affect the rights of Settling Defendants or of the
17 Plaintiffs against any third parties, not party to this Decree, nor does it limit the rights of third
18 parties, not party to this Decree, against Settling Defendants, except as otherwise provided by law.

19 26. This Decree shall not be construed to create rights in, or grant any cause of action to,
20 any third party not party to this Decree.

21 **XI. COSTS**

22 27. Plaintiffs shall be entitled to collect the costs (including reasonable attorneys' fees)
23 incurred in any action necessary to collect any portion of the amounts due under Sections VI, VII,
24 and Paragraph 16 of Section X, above, or any stipulated penalties due but not paid under Section
25 VIII, above.

1 **XII. NOTICES**

2 28. Unless otherwise specified herein, whenever notifications, submissions, or
3 communications are required by this Consent Decree, they shall be made in writing and addressed
4 as follows:

5 To the United States:

6 Chief, Environmental Enforcement Section
7 Environment and Natural Resources Division
8 U.S. Department of Justice
9 Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ No. 90-5-1-1-07061

10 Ann C. Hurley
11 Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice
301 Howard Street, Suite 1050
San Francisco, California 94105

14 Peter Keisler
15 Assistant Attorney General
16 R. Michael Underhill
17 Attorney in Charge, West Coast Office
18 Torts Branch, Civil Division
19 U.S. Department of Justice
7th Floor Federal Bldg., Room 7-5395
P.O. Box 36028
450 Golden Gate Avenue
San Francisco, California 94102-3463

20 To DOI:

21 Charles McKinley
22 Assistant Field Solicitor
23 1111 Jackson Street
Suite 735
Oakland, California 94607

24 To NOAA:

25 Katherine Pease
26 Senior Counselor for Natural Resources
27 Office of General Counsel
501 W. Ocean Boulevard, Suite 4470
Long Beach, California 90802-4213

28

1 To the State:

2 Anita Ruud
3 Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, California 94102-3664

5 To CDFG:

6 Katherine Verrue-Slater
7 Staff Counsel III
8 Stephen Sawyer
9 Staff Counsel III
10 Department of Fish and Game
Office of Spill Prevention and Response
1700 "K" Street, Suite 250
Sacramento, California 95814

10 To Settling Defendants:

11 Eugene J. O'Connor
12 Fowler Rodriguez & Chalos
13 366 Main Street
Port Washington, New York 11050

14 and

15 Matthew P. Vafidis
16 Holland & Knight
50 California Street STE 2800
San Francisco, California 94111

18 29. Any Party may, by written notice to the other Parties, change its designated notice
19 recipient or notice address provided above.

20 30. Notices submitted pursuant to this Section shall be deemed submitted upon mailing,
21 unless otherwise provided in this Decree or by mutual agreement of the Parties in writing.

22 **XIII. EFFECTIVE DATE**

23 31. The Effective Date of this Decree shall be the date of the Entry of this Decree by the
24 Court.

25 **XIV. RETENTION OF JURISDICTION**

26 32. The Court shall retain jurisdiction over this case until termination of this Decree, for
27 the purpose of effectuating or enforcing compliance with the terms of this Decree.
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XV. MODIFICATION

33. The terms of this Decree may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court.

XVI. TERMINATION

34. This Decree shall be terminated when the Plaintiffs determine that Settling Defendants have satisfactorily completed performance of their obligations required by this Decree, including payment of the amounts required under Sections VI and VII, and any outstanding stipulated penalties under Section VIII and performance of all obligations under Section VII. Upon such termination, the Parties shall file with the Court an appropriate stipulation reciting that the requirements of the Decree have been met.

XVII. PUBLIC PARTICIPATION

35. This Decree shall be lodged with this Court for a period of not less than thirty (30) days to allow the opportunity for public notice and comment. The Plaintiffs reserve the right to withdraw from or withhold their consent to this Decree if the comments from the public regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Settling Defendants consent to Entry of this Decree without further notice.

XVIII. SIGNATORIES/ SERVICE

36. Each undersigned representative of Settling Defendants, the CDFG, the CSLC, and the RWQCB, together with the Assistant Attorneys General for the Civil and the Environment and Natural Resources Divisions of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party or Parties he or she represents to this document.

37. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

38. Settling Defendants agree not to oppose the Entry of this Decree by the Court or to challenge any provision of the Decree, unless the consent of Plaintiffs, or any of them, has been withdrawn or withheld under the circumstances set forth in Paragraph 35 above, or Plaintiffs, or any

1 of them have notified Settling Defendants in writing that such Plaintiff no longer supports or agrees
2 to the Entry of this Decree.

3 39. Should Plaintiffs or any of them, after Entry of this Decree, commence an action in
4 this Court or any other court of competent jurisdiction to enforce any of the terms of this Decree or
5 any other matter arising under or relating to this Decree, then, with respect to such action and only
6 with respect to such action, Settling Defendants agree to accept service of process by mail of such
7 action and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules
8 of Civil Procedure and any applicable Local Rules of this Court including, but not limited to,
9 service of a summons.

10 **XIX. INTEGRATION**

11 40. This Decree, together with its Appendices, constitutes the final, complete, and
12 exclusive agreement and understanding among the Parties with respect to the settlement embodied
13 in the Decree and supersedes all prior agreements and understandings, whether oral or written,
14 concerning the settlement embodied herein. Other than the Appendices, which are attached to and
15 incorporated into this Decree, no other document, nor any representation, inducement, agreement,
16 understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor
17 shall it be used in construing the terms of this Decree.

18 **XX. FINAL JUDGMENT**

19 41. Upon approval and Entry of this Decree by the Court, this Decree shall constitute a
20 final judgment of the Court, in accordance with Rules 54 and 58 of the Federal Rules of Civil
21 Procedure, as among the Parties.

22 **XXI. APPENDICES**

23 42. The following appendices are attached to and incorporated into this Decree:

24 "Appendix A" is the draft Conservation Easement; and

25 "Appendix B" is the draft SRL-Trustee MOU.
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SO ORDERED.

Dated and entered this ____ day of _____, _____.

CHARLES R. BREYER
United States District Judge

1 We hereby consent to the Entry of the foregoing Consent Decree, subject to the Notice and
2 Comment provisions of Section XVII of this Decree:

3 FOR THE UNITED STATES:

4
5
6 DATED: 7/20/06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

10
11 DATED: 7/24/06

ANN C. HURLEY
Trial Attorney
Environmental Enforcement Section
United States Department of Justice

15
16 PETER KEISLER
Assistant Attorney General
Civil Division

17
18 DATED: 7/24/06

R. MICHAEL UNDERHILL
Attorney in Charge
West Coast Office
Torts Branch, Civil Division
United States Department of Justice

1 We hereby consent to the Entry of the foregoing Consent Decree, subject to the Notice and
2 Comment provisions of Section XVII of this Decree:

3 FOR THE STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME:

4
5 DATED: 6/8/06

6 LISA CURTIS
7 Acting Administrator
8 Office of Spill Prevention and Response
9 California Department of Fish and Game
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1 We hereby consent to the Entry of the foregoing Consent Decree, subject to the Notice and
2 Comment provisions of Section XVII of this Decree:

3
4 DATED: 6/26/06

5 CATHERINE KUHLMAN
6 Executive Officer
7 California Regional Water Quality Board
8 North Coast Region
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1 We hereby consent to the Entry of the foregoing Consent Decree, subject to the Notice and
2 Comment provisions of Section XVII of this Decree:

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4 DATED: 6/27/06

5 PAUL D. THAYER
6 Executive Officer
7 California State Lands Commission
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We hereby consent to Entry of the foregoing Consent Decree:

FOR SETTling DEFENDANTS:

DATED: July 10, 2006

EUGENE J. O'CONNOR
Fowler Rodriguez & Chalos
366 Main Street
Port Washington, New York 11050